

REMARKS

In the Office Action mailed 2/15/2006, Claims 1-9 were rejected as being obvious over the prior art under 35 U.S.C. § 103. Claims 10-14 were rejected as being indefinite under 35 U.S.C. §112.

In response, Applicant has added new drawing figure 5 to address the Examiner's §112 rejection of Claims 10-14. No new matter has been entered. Applicant further believes that the graphic depiction of Figure 5 will aid in the understanding of the distinction between Claims 1-9 and the cited prior art.

Patentability of Claims 1-9

These claims stand rejected as being obvious under 35 U.S.C. §103(a) over Dupray in view of Hobson. Applicant respectfully traverses these rejections for the reasons set forth in applicant's 2/3/06 response, further including the comments below.

As a preliminary comment, Applicant points out that the Examiner indicates that Liu "discloses using past measurements to arrive at later position estimates." Applicant does not argue this point, because it is moot. Applicant's claimed invention involves the "computing device then estimates a future position of said transmitter in reference to said cross-over point." Liu fails to disclose the location of a future position, but rather discloses an estimate of a new position once real-time data has been obtained that triangulates to that position. There is nothing in the Liu disclosure that indicates using a past position to effect the calculation of a future position. As this is true in the generic sense, clearly it is true for Applicant's claimed system of Claims 1-9, as previously amended. As shown in

New Drawing Sheet, Figure 5 (which is simply Figure 4 depicting two sequential data recovery points), the new estimated position (EP) is within a new set of probability fields – while this may not be new, what is new is the use of the connecting vector to further predict the future position (EP). In other words, the EP is on the connecting vector, which may have the effect of overriding the predicted location simply based on the lines of bearing and error bounds. Nothing in Liu discusses this approach.

Similarly, Dupray and Hodson both fail to disclose the use of the connecting vector to predict a future transmitter position, with method employing the connecting vector being defined in the specification as originally filed as: “generating a connecting vector from said real-time line of bearing to said cross-over position point; and identifying a real-time position of said transmitter along said connecting vector” See Claim 10. None of the cited references suggest such an approach to predicting the location of a transmitter.

A prima facie case of obviousness is established only when the Examiner provides:

1. one or more references¹
2. that were available to the inventor²
3. where the reference(s) teach³
4. a suggestion to combine or modify the reference(s)⁴

¹ *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

² See *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986).

³ *Akzo N.Y. v. U.S. Int'l Trade Comm'n*, 808 F.2d 1471, 1 USPQ 2d 1241, 1245 (Fed. Cir. 1986) (citing *In re Brown*, 329 F.2d 1006, 1011, 141 USPQ 245, 249 (CCPA 1964).

⁴ *In re Lahu*, 747 F.2d 703, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

5. the combination or modification of which would appear to be sufficient to have made the claimed invention obvious to one of ordinary skill in the art.⁵

Whether under rejection for anticipation or obviousness, if the Examiner fails to produce a prima facie case of unpatentability, "then without more the applicant is entitled to the grant of the patent."⁶

Here, elements 3, 4 and 5 are missing in Liu, Hodson and Dupray as detailed above, and therefore the prima facie case of obviousness has not been made and these claims must be allowed.

⁵ *Rockwell Int'l Corp. v. United States*, 147 F.3d 1358, 47 USPQ 2d 1027, 1033 (Fed. Cir. 1998).

⁶ *In re Oetiker*, 977 F.2d 1444, 24 USPQ 2d 1444 (Fed. Cir. 1992).

Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests that the application be reconsidered, the claims be allowed, and the case passed to issue.

Respectfully submitted,

STEINS & ASSOCIATES

A handwritten signature in black ink, appearing to read 'K. Steins', written over a horizontal line.

Karl M. Steins

Registration No. 40,186

2333 Camino del Rio South

Suite 120

San Diego, California 92108

Telephone: (619) 692-2004

Facsimile: (619) 692-2003